

Education and Workforce Development Cabinet

Kentucky Board of Education

Department of Education

(New Administrative Regulation)

704 KAR 3:090. The Use of Response-to-Intervention in Kindergarten through Grade Three (3).

RELATES TO: KRS 157.200

STATUTORY AUTHORITY: KRS 156.160 (1)(g), 158.305

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.160 (1)(g) gives the Kentucky

Board of Education the authority to promulgate administrative regulations and KRS 158.305

requires the Kentucky Board of Education to promulgate administrative regulations for the

district-wide use of a response to intervention system for students in kindergarten through grade

three (3). This administrative regulation establishes the requirements for a district-wide response

to intervention system for students in kindergarten through grade three (3).

Section 1. Definitions. (1) "Core instruction" means instruction, based on the state's academic

standards as set forth in 704 KAR 3:303, that is provided to all students.

(2) "Differentiated instruction" means the tailoring of curriculum, teaching environments, and

practices to create appropriately different learning experiences for students to meet each

student's needs while recognizing each student's learning differences, varying interests,

readiness levels, and level of responsiveness to the standard core curriculum.

- 1 (3) "Evidence-based" means classroom practices for which there is strong evidence of success.
- 2 (4) "Fidelity of implementation" means the accurate and consistent provision or delivery of
3 instruction as it was designed.
- 4 (5) "Intensive intervention" means that, in addition to core instruction and targeted intervention
5 instruction, a student is provided additional intervention services that are tailored to the student's
6 individualized academic or behavioral needs.
- 7 (6) "Intervention" means an educational or behavioral instruction, practice, strategy, or
8 curriculum that is provided to meet a student's academic and behavioral needs, in addition to
9 core instruction.
- 10 (7) "Response-to-intervention" means a multi-level prevention system to maximize student
11 achievement and social and behavioral competencies through an integration of assessment and
12 intervention.
- 13 (8) "Targeted intervention" means the use of screening data to design instructional interventions
14 provided, in addition to core instruction, when a student's universal screening and other data
15 results indicate that the student has not mastered a benchmark skill or grade level expectation in
16 mathematics, reading, writing, or behavior.
- 17 (9) "Universal screening" means screening that uses specific criteria to evaluate the learning and
18 achievement of all students in academics and related behaviors, that may include learning
19 differences, class attendance, tardiness, and truancy, to determine which students need closer
20 monitoring or an intervention.
- 21 Section 2. Local districts shall implement a comprehensive response-to-intervention system for
22 kindergarten through grade three (3) that includes:

- 1 (a) Multi-tiered systems of support, including differentiated core academic and behavioral
- 2 instruction and targeted, intensive academic and behavioral intervention, delivered by individuals
- 3 most qualified to provide the intervention services, that maximize student achievement and
- 4 reduces behavioral problems;
- 5 (b) Universal screening and diagnostic assessments to determine individual student needs and
- 6 baseline performance;
- 7 (c) Interventions that:
- 8 1. Are evidence-based;
- 9 2. Vary in intensity and duration based on student need;
- 10 3. Meet the needs of the individual student;
- 11 4. Are implemented with fidelity;
- 12 5. Are delivered by individuals most qualified to provide the intervention services; and
- 13 6. Are monitored through a comparison of baseline data, collected prior to intervention, and
- 14 ongoing progress data.
- 15 (d) Support for early intervention to address academic and behavioral issues; and
- 16 (e) Data-based documentation of:
- 17 1. Assessments or measures of behavior;
- 18 2. Progress during instruction;
- 19 3. Evaluation, at regular intervals, for continuous progress; and
- 20 4. Individual student reports shared with the parents of each student in kindergarten through
- 21 grade three (3) that summarize the student's skills in mathematics, reading, writing, the students'
- 22 behavior, and any intervention plans and services being delivered.

1 Section 3. The response-to-intervention system for kindergarten through grade three (3) shall
2 coordinate with district-wide interventions required by KRS 148.792, KRS 158.6453, KRS
3 158.6459, 704 KAR 3:305, 704 KAR 3:530, 704 KAR 3:285, and 707 KAR 1:300, 707 KAR
4 1:310, and 707 KAR 1:320.

5 Section 4. Local districts shall submit the data required by KRS 158.305 (10) to the Department
6 through the kindergarten to grade three (3) program review required in 703 KAR 5:230.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(4).

12-13-12
(Date)

Terry Holliday
Terry Holliday, Ph.D.
Commissioner of Education

12-14-12
(Date)

David Karem
David Karem, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on January 30, 2013, at 10:00 a.m. in the State Board Room, 1st Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this meeting shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2013. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to Kevin C. Brown, General Counsel, Kentucky Department of Education, First Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky, 40601, phone 502-564-4474, fax 502-564-9321.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 704 KAR 3:090

Agency Contact Person: Kevin C. Brown

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a district-wide response-to-intervention system for students in kindergarten through grade three (3).

(b) The necessity of this administrative regulation: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide use of a response-to-intervention system for students in kindergarten through grade three (3). Response-to-intervention optimizes a systematic and ongoing assessment of academic and behavioral needs and uses the data in collaborative conversations with parents/guardians and educators to prepare students to be college and career ready.

(c) How this administrative regulation conforms to the content of the authorizing statute: HB 69 (2012) requires the Kentucky Board of Education to promulgate administrative regulations for district-wide reporting on the use of K-3 response-to-intervention implementation in reading by August 1, 2013, in mathematics by August 1, 2014, and behavior by August 1, 2015; and the regulation conforms to those requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation defines the required district-wide system of interventions. The administrative regulation also defines the components required in that system, such as multi-tiered systems of support, universal screening, interventions that meet the needs of students, and documentation of those interventions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not an amendment.

(b) The necessity of the amendment to this administrative regulation: Not an amendment.

(c) How the amendment conforms to the content of the authorizing statute: Not an amendment.

(d) How the amendment will assist in the effective administration of the statutes: Not an amendment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public school districts in Kentucky that have K-3 students.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Districts will need to establish a system of tiered interventions for students in kindergarten through grade three who do not meet academic (reading, writing, and mathematics) and behavioral benchmarks.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Interventions can be developed and provided for students by established school personnel. A vendor product is not required or necessary to fulfill the requirements of the regulation. Schools may establish their own assessment system, but as schools are already required to have an elementary assessment, this regulation does not add any additional requirements. Depending upon the number of students identified for tiered services, schools may need additional staff if they cannot repurpose staff and would thereby incur additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As schools attend to the individual needs of each student, more students will attain and maintain grade level performance and will be more likely to meet proficiency and college and career readiness goals. Also as intervention occurs early with the appropriate intensity and duration, the number of students who are referred for special education evaluation and services will be reduced.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(b) On a continuing basis: Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs of diverse learners, the need for tier 2 and 3 interventions will decrease.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Schools may utilize Title I and general funds for intervention. If the school has a Read to Achieve Grant or Mathematics Achievement Fund grant, those funds are to be targeted to interventions. Also, 707 KAR 1:300 allows school districts to conduct coordinated early intervening services for students from kindergarten through 12th grade (with particular emphasis on students in kindergarten through grade three (3) who need additional academic and behavioral intervention) to be successful in the regular education environment prior to referral for special education. A school district shall not spend more than fifteen (15)

percent of the money received under IDEA Part B to provide these coordinated early intervening services.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if any, or by the change if it is an amendment: No increase in fees.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: No.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all schools and districts.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 704 KAR 3:090

Contact Person: Kevin C. Brown

Phone number: 564-4474

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. HB 69 (2012).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no impact on revenues with this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no impact on revenues with this administrative regulation.

(c) How much will it cost to administer this program for the first year? Initially, schools and districts are not required to use a specific vendor product or assessment and may use interventions and assessments that they develop. Resources for interventions are readily available and many are free. If products and services are purchased from a vendor, this could increase expenses for districts and schools. It is difficult to quantify the exact cost because schools will choose resources that most effectively meet the needs of their students.

(d) How much will it cost to administer this program for subsequent years? Once intervention resources and assessment resources are established, unless there is a consumable product such as a workbook or an ongoing maintenance fee for a product, there should not be a continuing cost. Also, as schools focus on differentiating core instruction to meet the needs of diverse learners, the need for tier 2 and 3 interventions will decrease.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: